

RECEIVED

MAY 17 2004

040116

Scoping Comments from Jeff van Ee, Toiyabe Chapter of the Sierra Club
May 17, 2004
Las Vegas, Nevada

The Sierra Club has previously submitted comments on the Department of Energy's proposal to store high-level nuclear waste at Yucca Mountain, Nevada. Comments have been provided on the Department's Environmental Impact Statement (EIS) for the repository during a previous scoping process, and members of the Toiyabe Chapter of the Sierra Club are providing comments during this scoping process on the transportation of nuclear waste within Nevada - most specifically, by rail and truck through our state. On March 5, 2004 I testified before the House Subcommittee on Railroads on the proposed railroad transportation route in Nevada. A copy of that testimony is submitted for scoping because many of the concerns expressed in that testimony to Congress need to be addressed.

As noted in the testimony to Congress, the Sierra Club remains opposed to the storage of high-level nuclear waste at Yucca Mountain. Nothing in the Department of Energy's site characterization process convinces the Club that it is time to move forward with the selection of Yucca Mountain as the final resting place for this nation's high-level nuclear waste. Too much is at stake to move ahead until all of the troubling issues with the transportation and storage of high-level nuclear waste have been resolved.

We are deeply troubled by the process that has been used to select Yucca Mountain, evaluate the environmental impacts, and restrict the consideration of alternatives. The Department seems to flaunt the objectives of the National Environmental Policy Act by first identifying the preferred action and then developing whatever paperwork is necessary to support their initial actions. Today, scoping for the development of an environmental impact statement for the transportation of high-level waste to Yucca Mountain comes *before* all of the science is in on Yucca Mountain and before the mountain is licensed by the Nuclear Regulatory Commission and *after* the Department identified in the December 29, 2003 notice in the Federal Register a railroad corridor in Nevada as their preferred alternative and requested withdrawal of the public land from the Bureau of Land Management. Is it surprising, with these actions, that many Nevadan's have little trust in the Department of Energy to objectively and adequately characterize the site, transportation routes, and environmental impacts?

The National Environmental Policy Act (NEPA) was enacted in January, 1970. Regulations from the Council on Environmental Quality have been issued, and revised, over the years to provide federal agencies guidance on how to comply with NEPA. The Club is concerned that basic provisions in the law and enabling regulations are being circumvented by the Department in requesting the withdrawal of public land for a rail corridor from Caliente, around the perimeter of the Nevada Test Site, to Yucca Mountain.¹

The Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act

¹ NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. 40 CFR, § 1500.1 Purpose. (b)

Regulations, published in the March 23, 1981 Federal Register, provide some insight into how the Department's December 29, 2003 notice and subsequent scoping process should be considered. The Council's response to Question 2b is informative:

Q. Must the EIS analyze alternatives outside the jurisdiction or capability of the agency or beyond what Congress has authorized?

A. An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if they are reasonable. A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. Section 1506.2d. Alternatives that are outside the scope of what Congress has approved or funded must still be evaluated in the EIS if they are reasonable, because the EIS may serve as the basis for modifying Congressional approval or funding in light of NEPA's goals and policies. Section 1500.1 (a).

10a. Q. What actions by agencies and/or applicants are allowed during EIS preparation and during the 30-day review period after publication of a final EIS?

A. No federal decision on the proposed action shall be made or recorded until at least 30 days after the publication by EPA of notice that the particular EIS has been filed with EPA. . . .

Until the agency issues its Record of Decision, no action by an agency or an applicant concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of alternatives. Section 1506.1 (a). But this does not preclude preliminary planning or design work which is needed to support an application for permits or assistance. Section 1506.1 (d).

We believe the Department of Energy has once again failed to analyze adequately the impacts of transporting high-level nuclear waste across the country to Yucca Mountain and that they have failed to consider a number of alternatives prior to their request for the withdrawal of public land for a railroad corridor that crosses the state of Nevada. The Bureau of Land Management should reject this request until an adequate environmental impact statement and record of decision has been issued. We expect the Department of Energy to fully consider and discuss in their EIS the no-action alternative.

TESTIMONY OF THE SIERRA CLUB
Jeff van Ee
BEFORE THE HOUSE SUBCOMMITTEE ON RAILROADS
MARCH 5, 2004

INTRODUCTION

Thank you for the opportunity to present my views, and the views of the Toiyabe Chapter of the Sierra Club, on the Department of Energy's proposed construction of a railroad in Nevada to transport nuclear waste to Yucca Mountain. I have been a Nevada resident since 1972. Since I arrived in the state, I have been actively involved in a variety of environmental issues. A major focus of my efforts has been on public lands issues and on the decision-making processes we use to decide how those public lands can best be utilized.

The Sierra Club has previously provided comments from a variety of sources on the Department's analysis of Yucca Mountain as a suitable place, and method, for disposal of nuclear waste. The Club has been critical of the process in which Yucca Mountain has been evaluated for the safe disposal of nuclear waste for thousands of years. Little has changed over the years in our longstanding concerns that the selection of Yucca Mountain has been driven more by politics and expediency than by an objective, judicious, scientifically-based process. Nevadans have shouldered much of the burden of the nuclear age through contamination of our air, water, soils, and people during the testing of nuclear weapons at the Nevada Test Site. The Atomic Energy Commission and Department of Energy's responses to the environmental and public health threats posed by nuclear testing and nuclear waste have led to a high degree of distrust and disgust among many Nevadans. Skepticism among many Nevadan's continues to be high as the Department of Energy announces a preferred transportation alternative. Serious questions remain about the appropriateness of Yucca Mountain as a site for high-level nuclear waste.

Like many Nevadans, I have not been actively involved with the Yucca Mountain issue; instead, I have relied on the State of Nevada and the Agency for Nuclear Projects to represent my concerns, to ask the tough questions, and to keep the Department of Energy honest. I commend the state for their position and their efforts in seeing that the best possible decisions are made on the fate of this nation's high-level nuclear waste.

THE PROPOSED CORRIDOR

The Sierra Club feels it is premature to be focusing in great detail on a rail corridor through Nevada when serious, fundamental questions remain on: the adequacy of Yucca Mountain to safely contain nuclear waste; the costs, risks, and impacts of transporting that waste throughout the country, and the decision-making process being used to consider alternatives and impacts.

The preferred Nevada rail corridor identified in the December 29, 2003 notice in the Federal Register requires additional analysis. The Department of Energy states that this analysis will come at a later time. While it is natural to expect a higher degree of the analysis of costs and

040116

impacts of constructing a new railroad in Nevada as the time approaches for detailed design, bidding, and construction of the railroad, that time does not seem to be now.

We believe the costs and timeframe for constructing the preferred corridor have been underestimated. Significant technical and environmental questions must be resolved.

INITIAL ANALYSIS OF CORRIDOR IMPACTS

The selected route will cut across the basin-range topography of Nevada through a seismically-active area of the nation. On a simple map, one can envision a single track railroad with dedicated locomotives and trains being used to slowly, carefully make their way across Nevada and around the perimeter of the Nevada Test Site to Yucca Mountain. On the ground, and in the future when construction begins, the conceptual model for design, construction and operation of the railroad may be far different. Steep grades for heavily-loaded trains are not good. Railbeds must be constructed to carry the loads and to keep the tracks from being washed out by flash floods and thrown out of alignment by high-temperatures and seismic activity.

Construction of the railroad will occur in an area downwind of above-ground nuclear tests where soils may be contaminated by radionuclides. Valley fever is a concern when large areas of top soil are disturbed in the southwest. Worker exposure to dust during construction is of particular concern, given the latest revelations about Yucca Mountain workers having been exposed to high levels of silica in the tunneling of the mountain.

Security and safety concerns have been expressed with the transportation of nuclear waste from day one, and after 9/11 they are even more significant. Whatever access people now have to the area will be severely restricted by concerns over security of the railroad right-of-way. A thin corridor which produces minimum impact on the environment and people's lives may be the initial desire, but the reality after the railroad is built may be far different.

In identifying the land potentially affected by a rail corridor, the analysis assumed a corridor width of 400 meters (1,300 feet, or about 0.25 mile). The purpose of the 400-meter width was to provide sufficient space for final alignment to route the rail line around sensitive land features or engineering obstacles. Actual construction and operation in the corridor would mostly require less than about 60 meters (200 feet) of the 400-meter width. [6-75, Final EIS]

The December 29, 2003 notice in the Federal Register for land withdrawals describes a corridor one mile in width. The Bureau of Land Management has been requested by the DOE "... to withdraw 308,600 acres of public land from surface entry and mining for a period of 20 years ... in the event the Nuclear Regulatory Commission authorizes a geologic repository at Yucca Mountain ...". The notice "segregates the land from surface entry and mining for up to 2 years while various studies and analyses are made to support a final decision on the withdrawal application." Why was this notice issued when no record of decision has been issued for this preferred corridor resulting from the Final EIS for Yucca Mountain? Why now? Are 2 years sufficient? What is the reasoning behind the 20 year withdrawal?

4

Whatever habitats and wildlife migration corridors exist will be bisected by the rail line. Wilderness Study Areas will be affected.

The operation of a rail line in the vicinity of the Weepah Spring Wilderness Study Area could affect the experience of visitors to the Area. The White River Alternate would not pass near the Area, as indicated in Appendix J, Section J.3.1.2. The proximity of an operational rail line to the Kawich and South Reveille Wilderness Study Areas probably would affect these areas by drawing attention to the rail line during operational or maintenance activities. [6-93, Final EIS]

Only Congress can designate wilderness and remove from consideration formally designated wilderness study areas. No decisions have yet been made on the wilderness study areas that would be affected by the preferred Caliente route. Our Congressional delegation is currently considering wilderness designation in the area affected by the proposed railroad. The right of way would go through part of three BLM WSAs (Kawich, South Reveille, and Weepah Spring) according to the Nevada Wilderness Project's analysis of detailed maps provided by the DOE. The corridor would impact the Quinn Canyon Wilderness addition proposed by the Nevada Wilderness Project by cutting through the southern eighth of the unit.

The DOE's Final EIS on Yucca Mountain states:

The analysis indicates no conflicts with commercial use and no identified conflicts with scientific studies for any of the proposed corridors. [6-75, Final EIS]]

This statement is another example of inadequate analysis being done by the DOE. Today, the Nevada Department of Tourism is advertising "The Other Side of Nevada" to encourage tourism into the rural parts of our state. This tourism campaign is needed to provide new economic opportunities to a region of the state that has lagged behind the booming southern Nevada and Reno areas. I have no doubt that when, and if, nuclear canisters move into Nevada that there will be impacts on our state's tourism based economy. Commercial use, i.e. tourist trips to visit "The Other Side of Nevada" of this portion of Nevada would be affected by construction of the Caliente Route and Yucca Mountain.

The presence of a rail line could influence future development and land use along the railroad in the communities of Beatty, Caliente, Goldfield, Scottys Junction, and Warm Springs (that is, zoning and land use might differ depending on the presence or absence of a railroad), as well as a potential Timbisha Shoshone community at their Trust Lands parcel near Scottys Junction. [6-92, Final EIS]

Endangered and threatened species would be impacted by the rail line.

About 50 kilometers (31 miles) along the southern end of the corridor, including variations in this area, is in desert tortoise habitat. [6-95, Final EIS]

One population of the Nevada sanddune beardtongue, a sensitive plant species, occurs within the 400-meter (0.25-mile) corridor and could be directly or indirectly affected by land-clearing activities and construction of the branch rail line. [6-97, Final EIS]

Preliminary analysis by the Nevada Wilderness Project indicates a number of impacts. The right of way will impact known occurrences of 8 threatened/endangered/special concern species: 5 plants, 1 reptile, 1 amphibian, 1 fish. The route would also impact nine Great Basin portfolio sites as identified by the Nature Conservancy. These sites represent viable examples of native species and plant communities. The impact of the railroad corridor on undeveloped valleys would be tremendous, with some of the valleys barely having a "real" road (graded, maintained) at this time. The building of the rail line would create the need for not only the line, but a graded road to access much of the length of the rail line. It would create a whole new roads network in south central Nevada. The implication of which could be staggering for species in the area, but also for native rangelands. Big new roads and rail lines bring undesirable exotic plants such as cheatgrass and Russian thistle (tumbleweed). Exotic plants are a growing problem for Nevada's range and ranchers.

The railroad will cut proposed rights-of-way for water pipelines, powerlines, and off-highway trails. The proposed railroad will surely complicate efforts to move those proposed efforts forward.

The railroad will likely require its own communication lines and facilities, powerlines, and infrastructure to create a safe and secure working railroad. These will impact the environment directly through disturbance of the land and indirectly by providing roosting sites for and hazards for wildlife.

In the event of problems, or accidents, with the transport of nuclear waste in Nevada, long delays in getting critical personnel and equipment to the site could occur unless facilities and staging areas were constructed along the route. Additional impacts would result. The DOE needs to be more forthcoming in detailing the additional infrastructure that would be required along with the proposed transportation routes.

Construction camps, staging areas, and gravel pits will be required in isolated areas of the state along the proposed right-of-way. The impacts of these can better be assessed through more detail analysis of the environmental impacts of the proposed rail line.

THE FINAL EIS AND EIS PROCESS IN EVALUATING THE RAIL CORRIDOR

The National Environmental Policy Act and the implementing regulations encourage the tiering of environmental impact studies on large, complex projects. Regrettably, the Department of Energy has done a poor job in staging their environmental analyses and providing an objective analyses of the impacts and alternatives. A Records of Decision should be issued by the lead federal agency which states what the decision was, identify and discuss the alternatives, and "... state whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not." [40 C.F.R. Sec. 1505.2] A Record of

Decision from the Department of Energy has not been issued with the issuance of the Final EIS for Yucca Mountain; yet, we find the Department proceeding with the Caliente corridor for rail transportation of nuclear waste in Nevada and a request to the BLM to withdraw public lands from multiple use. This behavior is troublesome, quite possibly illegal, and conveys the impression to Nevadans that this whole effort is being railroaded into Nevada. Sound science and public trust seem to be secondary matters.

The National Environmental Policy Act, with important guidance from the Council on Environmental Quality, can be quite useful in the decision-making process for federal actions that will significantly affect our environment. Environmental impact statements, if properly done, provide the factual basis and expression of concerns from stakeholders that are vital to our democratic, decision-making process. To comply with NEPA for the sake of compliance with the law does an injustice to the Act. The Department should embrace the underlying principles of NEPA to reach out to stakeholders at an early stage to learn of their concerns, to identify alternatives, and to state, after a decision has been made "... whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not." The Department should not be allowed to skip steps in the entire decision-making process for isolating and disposing of high-level nuclear waste by selectively evaluating alternatives and not issuing key decision-making documents.

We still do not know if Yucca Mountain will be licensed. We still do not know whether the preferred method of transportation by rail in Nevada and the nation is viable because of safety, security, and infrastructure questions with getting the waste to Nevada; consequently, it seems premature for the Department and the Bureau of Land Management to be withdrawing public land from multiple-use for the "Caliente" corridor when many issues remain to be resolved.